



**VERMONT
LEGAL
AID**



**LEGAL
SERVICES
VERMONT**

WORKING TOGETHER FOR JUSTICE



WORKING TOGETHER FOR JUSTICE

Changes To Vermont's Special Education Rules

Presented to Autism Workgroup

By

Marilyn A. Mahusky

Staff Attorney

Disability Law Project

June 22, 2021

WHY DID THE RULES CHANGE?

- Act 173
 - Vermont Legislature passed Act 173 in 2018: *to enhance the effectiveness, availability, and equity of services provided to all students who require additional support in Vermont's school districts.*
 - Three primary effects:
 - Change funding for special education from reimbursement model to census-based block grant model by 2025
 - Changes to rules for independent schools
 - Address the needs of “struggling students”

UVM Study

Current funding model has a number of limitations.

- (1) Administratively costly for the State and localities;
- (2) Misaligned with policy priorities, particularly with regard to the delivery of a multitiered system of supports and positive behavioral interventions and supports;
- (3) Creates misplaced incentives for student identification, categorization, and placement;
- (4) Discourages cost containment; and
- (5) Unpredictable and lacks transparency.



DMG REPORT

Five recommendations
on best practices for the
delivery of special
education services

- (1) Ensure core instruction meets most needs of most students;
- (2) Provide additional instructional time outside core subjects to students who struggle, rather than providing interventions instead of core instruction;
- (3) Ensure students who struggle receive all instruction from highly skilled teachers;
- (4) Create or strengthen a systems-wide approach to supporting positive student behaviors based on expert support; and
- (5) Provide specialized instruction from skilled and trained experts to students with more intensive needs



APPROVED INDEPENDENT SCHOOLS

2017 Summer Study
Committee

- Charged with making recommendations on criteria to be used by SBE for designation of “approved” independent school.
- Tasked with making recommendations for
 - enrollment
 - limitations on enrollment
 - how IS required to deliver SPED & in what categories of disability



Independent Schools Study Committee

Proposed specific
legislative language

Vermont students with disabilities should be free to attend the schools that they, their parents and their local education agency deem appropriate to them.



AOE must initiate rulemaking

- **Process:**
 - AOE drafts proposed rule
 - Submits to State Board of Education
 - SBE holds public hearings
 - Adopts rule
 - Rule sent to LCAR for final approval
 - Approved by LCAR May 2021

MAJOR CHANGES TO RULE SERIES 2360

- Definition of “Special Education Services”
- Definition “Adverse Effect”
- Addition of “functional skill” to basic skill areas
- Elimination of discrepancy model
- Increased voice for parents

Old Rule 2362.2.12

- “Special Education” means specially designed instruction that *cannot be provided within the school’s standard instructional conditions or provided through the schools’ educational support system...*
- No cost to parent
- Meet unique needs of child that result from child’s disability
- Ensure access to the general curriculum so that child can meet educational standards applied to all children

New Rule 2362.2.12

- “Special Education Services” means
Specially designed instruction

- No cost to parent
- Meet unique needs of child with disability
- Ensure access to the general curriculum so that child can meet educational standards applied to all children

Major differences between old rule and new rule

- Change in term from
 - “special education” means specially designed instruction
- to
 - “special education *services*” means “specially designed instruction”
- Eliminates limitation not otherwise available within standard instructional system or EST, i.e., cannot deny based on availability of other services within school

Eligibility Rule – 2362(a)

- To qualify for special education services - three gates:
 - Child has a “disability” within disability categories
 - Disability results in *adverse effect* on child’s educational performance in 1 or more basic skill areas
 - Child needs special education “*to access*” and benefit from educational program. Support not available thru EST, standard instructional system or supplementary aids and services

Revised eligibility rule – 2362(a)

- Adverse effect not required consideration under “Deaf-Blindness” and “Specific Learning Disability”
- Adverse effect not gone.
 - “Autism Spectrum Disorder” (2362.1(a)(4))
 - Opinion of licensed psychologist/medical physician
 - Training & experience understanding autism disorders & its effect on student’s ability to function and whether there is *adverse effect* on child’s educational performance

Adverse Effect - Rule 2362(d)

- Old rule:
- To determine whether child's disability has an adverse effect on educational performance, EPT must determine student is functioning *significantly below grade norms compared to peers in one or more of the basic skills areas*



- New rule:
- “Adverse effect” and “adversely affect” used interchangeably
- Means to have a negative impact on the basic skills areas
 - Impact not substantial, significant, or marked
 - More than minor or transient



Under new AE rule

- To determine “adverse effect” of disability on basic skill area
 - Evidenced by findings and observations
 - Based on data sources and objective assessments with replicable results
- EPT must use range of diagnostic and performance data
- EPT must consider academic and nonacademic aspects child’s functioning

New Adverse Effect Rule – cont'd

- Educational deficiencies persists or will persist over time in spite of specific alternative strategies provided within Gen Ed setting
- EPT “should” document that scientific, research-based interventions implemented with fidelity
- EPT will consider these efforts and their impact when determining adverse educational performance

Basic skill areas Rule 2392(g)

- Oral expression
- Listening comprehension
- Written expression
- Basic reading skills
- Reading comprehension
- Mathematics calculations
- Motor skills
- *FUNCTIONAL SKILLS (new!)*

Functional skills – Rule 2362(g)(4)

- Means *the acquisition of essential and critical skills needed for a child with disabilities to learn specific daily living, personal, social, and employment skills or the skills needed to increase performance and independence at work, in school, in the home, in the community, for leisure time, and for post-secondary and other life-long opportunities.*

“Specific Learning Disabilities” – Rule 2362.2.5

- Under new rule districts no longer permitted to use discrepancy model, *i.e.*, 1.5 standard deviations or more between ability and expected levels of performance in basic skill
- District must determine whether student responds to scientific, research-based intervention or *use a model based on other... research-based procedures ...*
- No adverse effect requirement

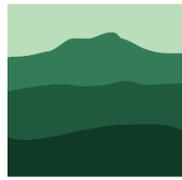


Parent Input – New Rule – 2362.2.4(j)

- *The IEP shall contain a section for parents to provide written comments regarding their child's IEP. Following an IEP meeting to write or amend an IEP, the LEA shall send to the parent together with prior written notice of decision.*
 - Parent has 10 days to complete & return
 - Purpose of – *facilitate feedback from families to ensure they have an opportunity to express any opinions about IEP or IEP process*

EFFECTIVE DATE – July 1, 2022





**VERMONT
LEGAL
AID**



**LEGAL
SERVICES
VERMONT**

WORKING TOGETHER FOR JUSTICE

NEED HELP?

Contact Vermont Legal Aid, Inc.

Legal Services Vermont

1-800-889- 2047

<https://legalservicesvt.org/get-help>